

STATE OF MICHIGAN
COURT OF APPEALS

ELAINE PRICE, Personal Representative of the
Estate of LILLIAN BARLOW PRICE, a/k/a
LILLIAN DELORES PRICE,

Plaintiff-Appellant

v

ARNOLD SHAPERO,

Defendant/Third Party Plaintiff/-
Appellee/Cross Appellant,

and

DAVID ROSENTHAL and DAVID
ROSENTHAL, P.C.,

Third Party Defendants/Cross
Appellees.

UNPUBLISHED
December 21, 2001

No. 224232
Wayne Circuit Court
LC No. 99-907921-CK

Before: Meter, P.J., and Jansen and Gotham*, JJ.

MEMORANDUM.

Plaintiff appeals as of right a circuit court order granting defendant's motion for summary disposition and defendant cross appeals from the same order, which dismissed his third-party complaint as moot. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent obtained a judgment against defendant in his capacity as receiver. Plaintiff filed this action against defendant individually, seeking to renew the judgment and to have him held personally liable. The trial court ruled that because plaintiff had sued defendant in the wrong capacity and the limitations period had expired without her seeking to name him as a party defendant in the proper capacity, the claim was barred. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997).

* Circuit judge, sitting on the Court of Appeals by assignment.

This Court may decline to grant relief because plaintiff has not addressed the basis of the trial court's ruling in her appeal. *Joerger v Gordon Food Service, Inc.*, 224 Mich App 167, 175; 568 NW2d 365 (1997). That aside, her argument that the designation "Receiver" as used in the judgment was of no legal significance because it did not refer to or identify the receivership has not been preserved for appeal because plaintiff did not raise it below and the trial court did not address it. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000).

We must also reject plaintiff's claim that defendant's status as receiver in the underlying action was a nullity, because plaintiff's decedent never challenged defendant's appointment as receiver and the appointment of a receiver is not open to collateral attack. *Westgate v Adams*, 293 Mich 559, 563; 292 NW 491 (1940).

In his cross-appeal, defendant claims that the trial court erred in dismissing his third-party complaint as moot. A review of the record shows that defense counsel agreed that the dismissal of plaintiff's complaint obviated the need for defendant's third-party complaint, and he himself prepared the order dismissing the third-party complaint as moot. Because defendant conceded the issue below, he cannot claim error on appeal. *Living Alternatives for the Developmentally Disabled, Inc. v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham